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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/869,849	10/18/2001	Harold Fisher	3589.65672	1292
24978	7590	07/01/2003		
GREER, BURNS & CRAIN 300 S WACKER DR 25TH FLOOR CHICAGO, IL 60606			EXAMINER	
			MATHEW, FENN C	
		ART UNIT	PAPER NUMBER	
		3764		
DATE MAILED: 07/01/2003				
10				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	09/869,849	FISHER, HAROLD
	Examiner Fenn Mathew	Art Unit 3764

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 08 April 2003.

2a) This action is **FINAL**. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1 and 5-15 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 1,5,6 and 8-15 is/are rejected.

7) Claim(s) 7 is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on _____ is: a) approved b) disapproved by the Examiner.
 If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
 * See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
 a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____	6) <input type="checkbox"/> Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
2. Claims 1, 5, 6, and 8-15 are rejected under 35 U.S.C. 102(b) as being anticipated by Furr et al. (U.S. Patent No. 5,188,356). Referring to claim 1, Furr discloses a device comprising a thumb stabilizing component (see fig. 6) and index finger receiving section (31) and a non-extendable flexible connector extending between the thumb section and index finger receiving section (taken as portion of material between thumb loop and portion wrapped around the index finger), and a positioning component (26) comprising an elongated strap having a first end secured to the thumb stabilizing component at a point between the thumb stabilizing component and index finger component (strap overlaps), and a second end relasably securable to the stabilizing component (inherently since first end and stabilizing component have co-operable hook and loop fasteners).
3. Referring to claim 5, Furr discloses a device inherently having sufficient length to extend from the stabilizing component along the palm of the hand and to an around the wrist. (Inherent since device is disclosed as having sufficient length to go around the back of the hand and wrap around the wrist, furthermore Furr discloses the length can be even greater in column 5, lines 13-15).
4. Referring to claim 6, Furr discloses the thumb stabilizing component and the positioning component being integral and formed of a single length of a suitable fabric

webbing (as best understood by the examiner, since Furr device is made of an elongated inelastic material as required by applicant's device).

5. Referring to claim 8, Furr discloses a device including a thumb receiving section an index finger receiving section, a non-extendable flexible connector extending between the thumb section and index finger receiving section (taken as portion of material between thumb loop and portion wrapped around the index finger), and an elongated strap secured to the index finger receiving section.

6. Referring to claim 9, Furr discloses a device made from one continuous ribbon of material.

7. Referring to claim 10, Furr discloses the material formed of a single length of a suitable fabric webbing (as best understood by the examiner, since Furr device is made of an elongated inelastic material as required by applicant's device).

8. Referring to claim 11, Furr discloses the thumb receiving section having a surface engaging a substantial portion of the distal side relative to the index finger of the proximal phalange of the thumb (see fig. 6).

9. Referring to claim 12, Furr discloses the index finger receiving section fitting around the base of the proximal phalange of the index finger. (See fig. 6).

10. Referring to claim 13, Furr discloses a device that allows the thumb to move back but not hyper-extend or abduct the thumb from the base of the index finger beyond 100 degrees. (Inherently device will not allow thumb to move beyond 100 degrees from the index finger.)

11. Referring to claim 14, Furr discloses a splint where the securing strap attached to the index finger receiving section at the point where the index finger receiving section connects with the connector to hold the receiving sections down on the fingers wrapped across the hand and the wrist to secure the splint.

12. Referring to claim 15 the limitations are essentially equivalent in scope to the claims above. Please see rejections above.

Allowable Subject Matter

13. Claim 7 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Please see paragraph 14 of the previous office action.

Response to Arguments

14. Applicant's arguments filed 10/10/2002 and 4/8/2003 have been fully considered but they are not persuasive. Applicant's arguments are directed towards functional language and intended use. Furr discloses the claimed structural limitations in their broadest reasonable interpretation. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative

difference as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963). Examiner disagrees with applicant's argument that Furr does not disclose a thumb receiving section, as Furr has not disclosed the thumb receiving section consisting of a **loop**, therefore Furr meets the claimed limitation.

Conclusion

15. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Fenn Mathew whose telephone number is (703) 305-2846. The examiner can normally be reached on Monday - Friday 9:00am - 5:30pm.

Art Unit: 3764

The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9302 for regular communications and (703) 872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.

fcm
fcm
June 25, 2003

Nicholas D. Lucchesi
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